

# GUIDELINES FOR PREPARING AGREEMENTS

- *Technical Assistance Agreements*
- *Manufacturing License Agreements*

These Guidelines were prepared by the U.S. State Department Bureau of Political Military Affairs, Directorate of Defense Trade Controls, Office of Defense Trade Controls Licensing (DTCL). They are intended as an informal aid in applying the International Traffic in Arms Regulations (ITAR), ITAR 120-130. Should changes to the regulations take place, the regulatory changes take precedence.

We welcome the use of this document in training programs but request that there be no charge to the material. In instances where material is extracted, reference should be made to this publication as the source.

If you have specific questions on any matter related to this guidance, contact the Office of Defense Trade Controls Licensing for further assistance. Comments or suggestions regarding this publication should be directed to this office, ATTN: Guidelines for Agreements.

The latest version of these guidelines can be found at the DDTC Web site ([www.pmddtc.state.gov](http://www.pmddtc.state.gov)) under the "Licensing" section in "Reference Library."



Peter J. Berry  
Director, Office of Defense Trade Controls  
Licensing

October 2003

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## 1.0 CONTACTING DTCL

To contact Directorate of Defense Trade Controls (DDTC) employees by e-mail use the format (last name initials @ state.gov).

Example for John Q. Public:

**publicjq@state.gov**

When sending your agreement submissions using the U.S. Postal Service system use the address below:

### **Mail**

Directorate of Defense Trade Controls  
PM/DTC, SA-1  
2401 "E" Street, N.W., Suite 1200  
Washington, D.C. 20522-0112

### **By Courier**

See PM/DDTC Web site [www.pmddtc.state.gov](http://www.pmddtc.state.gov)

### **Key Telephone Numbers:**

Defense Trade Controls Information:

- Status of Cases: (202) 663-2980
- Licensing: (202) 663-2725 or 2726 or 2738 or 2739 or 2796
- Agreements: (202) 663-2731 or 2732 or 2733 or 2735 or 2736

Case Tracking Access (Telephonic): (202) 663-2980 Tuesdays & Thursdays 8:00 am - 4:30 pm

Case Tracking Access (Electronic): (202) 663-2837 (empowered official must sign-up)

Once Signed Up, Access: <http://www.pmddtc.state.gov/Forms/LicenseAppStatus.htm>

Case Tracking of DoD-Staffed Cases: [http://www.dtsa.osd.mil/Elisa\\_Results.aspx](http://www.dtsa.osd.mil/Elisa_Results.aspx)

**Facsimile Numbers:** (see Web site [www.pmddtc.state.gov](http://www.pmddtc.state.gov))

To obtain license application forms (DSP-5, DSP-61, DSP-73, DSP-85, DSP-83, DSP-119), registration information, additional copies of this booklet and/or other information concerning the export of defense articles and services, see our Web site. If you do not have access to the Web site, please call the DDTC receptionist at (202) 663-2980.

## **2.0 AGREEMENTS**

### **What is an Agreement?**

In State Department export control terms (ITAR 124.1), an agreement approved by the Office of Defense Trade Controls License (DTCL) allows a U.S. person to provide a defense service, technical assistance, or manufacturing know-how to a foreign person. Technical data and other defense articles such as hardware may be covered in the scope of an agreement as well. The assistance and know-how is what distinguishes an “Agreement” from other forms of authorizations issued by DTCL.

### **Activities Frequently Requiring Agreements**

- Marketing Products to Foreign Parties
- Supporting Sales to Foreign Parties
- Providing Overseas Maintenance or Training Support
- Technical Studies or Evaluations with Foreign Parties
- Release of Manufacturing Data or Rights
- Efforts to Import Technology from Abroad
- Supporting a Foreign Military Sales Case (ITAR 126.6)
- Supporting U.S. Government-Sponsored Foreign Contracts (ITAR 126.4)

### **2.1 TECHNICAL ASSISTANCE AGREEMENT (TAA) ITAR 120.22**

An agreement for the performance of a defense service(s) or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles. Assembly of defense articles may be included, but providing production rights or manufacturing know-how are not conveyed. Should such rights be transferred, a Manufacturing License Agreement would be required.

### **2.2 MANUFACTURING LICENSE AGREEMENT (MLA) ITAR 120.21**

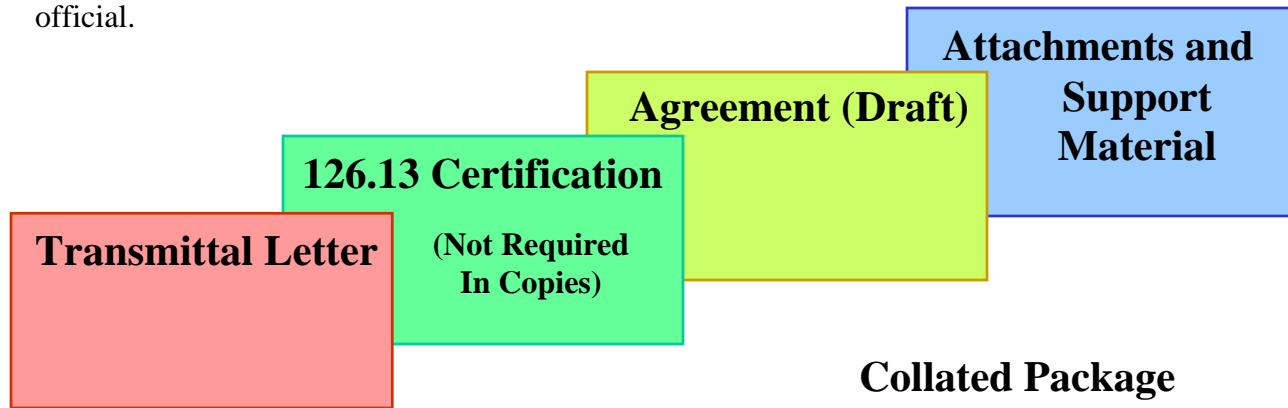
An agreement whereby a U.S. person grants a foreign person an authorization to manufacture defense articles and which involves or contemplates:

- a. The export of technical data or defense articles or the performance of a defense service; or
- b. The use by the foreign person of technical data or defense articles previously exported by the U.S. person.

A MLA involves the licensing of a manufactured defense article abroad, which requires the U.S. party providing manufacturing know-how to the foreign party (i.e., teaches the foreign party how to manufacture the item). A MLA can also involve just the assembly of hardware abroad and no actual manufacturing, if the foreign party requires manufacturing data in order to complete the assembly.

## 2.3 ELEMENTS OF TAA AND MLA PACKAGES

1. Transmittal Letter per ITAR 124.12 (see Sections 3.0 and 5.0)
2. One original Certification Letter per ITAR 126.13 (see Section 8.0), signed by an empowered official.



3. Proposed agreement, preferably unsigned—since DTCL may impose changes that must be made prior to signature (see Sections 4.0 and 6.0).
  - a. Required ITAR 124.7 information contained within the main body of the agreement.
  - b. Required ITAR 124.8 and ITAR 124.9 clauses (if applicable) contained within the main body of the agreement.
  - c. Signature block for each party at end of main body of the agreement.
4. Attachments, Appendices or Annexes (i.e., such as Statement of Work, defense articles to be exported). Be sure to cross-reference—that is, reference the attachments in the body of the agreement and properly reference the agreement in the attachments.
5. Supporting technical data, white paper, etc. (i.e., relevant to technology export issues). This is generally material not directly referenced in the agreement but may help support an approval decision (see Section 10.5).

## 2.4 AMENDMENTS TO EXISTING AGREEMENTS

Changes to the scope of approved agreements, including modifications, upgrades or extensions must be submitted for approval in writing to DTCL prior to the execution of the amended scope. An amendment may not enter into force until approved by DTCL (ITAR 124.1(c)). See Sections 5.0 and 6.0 for formats on an amendment.

## 2.5 TIMELINES

Most agreements require interagency coordination. The processing time for any agreement or amendment that requires coordination and staffing averages between 30 and 60 days. For cases requiring Congressional notification, add 30-90 days. Requirements for Congressional notification are in ITAR 124.11 and are explained in Section 10.3 of these guidelines.

### **3.0 SUGGESTED FORMAT FOR A TECHNICAL ASSISTANCE AGREEMENT OR MANUFACTURING LICENSE AGREEMENT TRANSMITTAL LETTER**

The Transmittal Letter provides an executive summary of the proposed agreement, for U.S. Government use only. The letter requires export and technical information as required by ITAR 124.12 and these guidelines.

If the submission is missing important information in the Transmittal Letter, the agreements officer may contact the company for additional information to correct the problem. This new material will become part of the submission package.

The format herein is provided for either a TAA or MLA, and when appropriate, explains where differences between these submittals exist. Items in italics explain information to be provided by the applicant.

(Date)

Mr. Peter J. Berry  
Director, Office of Defense Trade Controls Licensing  
2401 E Street N.W., Suite 1200 (SA-1)  
Washington, D.C. 20522-0112

Subject: Proposed Technical Assistance Agreement (or Manufacturing License Agreement)  
between (*U.S. company(ies)*) and (*foreign party(ies) with country*)

References: *Previous case, which may include other agreements, amendments, licenses, general correspondence and FMS cases if applicable.*

Dear Mr. Berry:

Submitted herewith are (*X - see Section 11.1 of these guidelines for number of copies*) **collated** copies of this submission package which includes this letter, a certification letter and the proposed Technical Assistance Agreement between (*U.S. company(ies)*) and (*foreign party(ies) with country*) for the transfer of certain technical information, hardware (*if applicable*) and services necessary for (*state the purpose of the agreement and commodity or technical data/technology to which it relates*).

## **BACKGROUND**

Provide a **brief** description on the purpose of the agreement and how it will be executed by the parties. This section should be no longer than a page, preferably in bullet format for easier review and reference. Include:

- *General scope of the effort to include defense articles and defense services being provided.*
- *Description of the roles each party plays and state who the end-users are.*
- *Any history that may better explain why this agreement is required.*
- *A short review of the commodity or program as necessary.*
- *Any known precedent of export that may pertain to this agreement.*
- *Information on the type of technology or data that will be transferred. Attachments can be included that contain more detailed information, but a short description is still required.*

## **REQUIRED INFORMATION**

In accordance with ITAR 124.12, the following information is provided:

**(a)(1)** The DDTC applicant code is: (*Provide your registration number in format mmyy-####*)

**(a)(2)** The foreign licensee(s) is/are (*foreign party(ies)*), located in (*country (ies) and specific location of facility*). The scope of this agreement entails (*U.S. company*) performing defense services (*or manufacturing know-how if an MLA*) or disclosing technical data or providing defense articles (*applicant should provide an one-line description*) to the licensee for the (*briefly identify*)



*task to be performed) of (commodity or program). The agreement is valid through (must provide an actual calendar date). The commodity will be sold to (identify foreign end-user, if applicable).*

**(a)(3)** *Applicant must identify relevant U.S. Government contracts under which equipment or technical data was generated, improved or developed and supplied to the U.S. Government (to include any relationship to any Foreign Military Sales (FMS) case), and whether the equipment or technical data was derived from any bid or other proposal to the U.S. Government. If none, so state and identify cognizant U.S. military service.*

**(a)(4)** *The highest U.S. military security classification of the equipment or technical data to be transferred under the terms of this agreement is: (DoD security classification or any foreign classification—this will be “Unclassified”, “Confidential”, or “Secret”).*

**(a)(5)** *Applicant must state whether any patents are on file concerning this agreement as required by ITAR 124.12(a)(5). If so, the patents must be listed herein.*

**(a)(6)** *Applicant must provide a statement indicating the actual or estimated value of the agreement, broken out as described in Section 9.1 of these guidelines and shown in the example table below. The applicant can describe pertinent details to the value breakout deemed necessary to explain the case. However, the table should generally cover these elements shown (see Section 9.1 of these guidelines).*

*Example:*

<b>Technical Data</b>	<b>\$100,000</b>
<b>Defense Services</b>	<b>\$500,000</b>
<b>Hardware</b>	
Permanent Export by DSP-5 or by 123.16(b)(1) Exemption	\$500,000
Temporary Export by DSP-73	\$200,000
Temporary Import by DSP-61	<u>\$100,000</u>
<b>Total Licensed Hardware</b>	<b>\$800,000</b>
<b>Hardware Manufactured Abroad (MLA only)</b>	<b>\$1,500,000</b>
<b>AGREEMENT TOTAL VALUE</b>	<b>\$2,900,000</b>
<b>Other Values of Interest to DTCL</b>	
Permanently Imported Hardware Procured Abroad ( <b>TAA only</b> )	\$500,000
Non-ITAR Hardware for Export	\$100,000
Repair or Replacement Export	\$900,000

*If the value is \$500,000 or greater to the armed forces of a foreign government or an international organization, an additional statement must be made regarding the payment of political contributions, fees or commissions, pursuant to Part 130. If none have been paid, a statement must be provided to this effect. **If payments have been made, please provide a separate statement signed by the empowered official.***

*If the agreement requires notification to Congress, an additional statement indicating whether an offset agreement is proposed to be entered into in connection with the agreement and a*

*description of any such offset agreement must be included. For Congressional notification valuation, see Section 10.3 of these guidelines.*

**(a)(7)** *Applicant must provide a statement indicating whether any foreign military sales credits or loan guarantees are or will be involved in financing the agreement.*

**(a)(8)** *The agreement must describe any classified information involved (U.S. or foreign) and identify, from DoD form DD 254, the address and telephone number of the U.S. Government office that classified the information and the classification source (i.e., document). If no classified information is involved, so state, but do not omit.*

**(a)(9)** *For agreements that may require the export of classified information, the Defense Security Service cognizant security offices that have responsibility for the facilities of the U.S. parties to the agreement shall be identified. The facility security clearance codes of the U.S. parties shall also be provided. If no classified information is involved, so state, but do not omit.*

### **REQUIRED STATEMENTS**

*The following statements must be included verbatim as written in ITAR 124.12(b).*

**(b)(1)** If the agreement is approved by the Department of State, such approval will not be construed by the applicant as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will the applicant construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement.

**(b)(2)** The applicant will not permit the proposed agreement to enter into force until it has been approved by the Department of State.

**(b)(3)** The applicant will furnish the Department of State with one copy of the signed agreement (or amendment) within 30 days from the date that the agreement is concluded and will inform the Department of its termination not less than 30 days prior to the expiration and provide information on the continuation of any foreign rights or the flow of technical data to the foreign party. If a decision is made not to conclude the proposed agreement, the applicant will so inform the Department within 60 days.

**(b)(4)** If this agreement grants any rights to sub-license, it will be amended to require that all sub-licensing arrangements incorporate all the provisions of the basic agreement that refer to the U.S. Government and the Department of State (i.e., ITAR 124.8 and 124.9). *If sub-licensing will not be granted, then stating that instead will be fine.*

*The applicant must provide a statement whether **sub-licensing rights** are granted to the licensee(s) under the agreement or if the foreign party plans to subcontract part of their effort to other companies. If sub-licensing rights are granted, list the article, section, paragraph and page number of the agreement where a description of the arrangements are located. See Section 10.1 of these guidelines for directions on sub-licensing.*

To facilitate U.S. Government consideration of this request, the following provisions required by the ITAR are located in the agreement:

Pursuant to ITAR 124.7: *(Specifically list article, section, paragraph, and page number where the required information/clauses can be found in the agreement.)*

124.7(1)  
124.7(2)  
124.7(3)  
124.7(4)

Pursuant to ITAR 124.8: *(Specifically list article, section, paragraph, and page number where the required information/clauses can be found in the agreement.)*

124.8(1)  
124.8(2)  
124.8(3)  
124.8(4)  
124.8(5)  
124.8(6)

***For a MLA only***

Pursuant to ITAR 124.9: *(Specifically list article, section, paragraph, and page number where the required information/clauses can be found in the agreement.)*

124.9(a)(1)  
124.9(a)(2)  
124.9(a)(3)  
124.9(a)(4)  
124.9(a)(5)  
124.9(a)(6)

*These additional statements are required if manufacture of Significant Military Equipment is involved in a MLA:*

124.9(b)(1)  
124.9(b)(2)

*Letters of transmittal should make one of the following statements regarding hardware:*

No defense articles will be shipped in furtherance of this agreement. Only technical data and/or other defense services will be provided.

*or*

Defense articles intended for export in furtherance of this agreement will be shipped via separate license (e.g., DSP-5, DSP-73, etc.).

*or*

Pursuant to ITAR 123.16(b)(1), the items intended for export are identified by item, quantity and value in (*state annex, appendix, etc.*). Pursuant to ITAR 126.13(b), freight forwarders, end users, and consignees are listed. The items are not classified, are not SME, are not Missile Technology Control Regime (MTCR) articles (*see ITAR 121.16*) and are not articles for which a Congressional notification will be required (*see ITAR 123.15*).

This agreement relates to the following U.S. Munitions List category(ies): (*list applicable USML category and article from ITAR 121*). These category(ies) are/are not designated as Significant Military Equipment (SME). *For multiple categories, state which are designated SME. If hardware will be exported, then identify whether it/they is/are SME.*

A Nontransfer and Use Certificate, Form DSP-83, as required for the transfer of SME, classified articles or classified technical data is/is not attached in accordance with ITAR 124.10.

*Insert a statement as to whether or not the proposed agreement requires Congressional notification (see Section 10.3 of these guidelines for Congressional notification thresholds). If such notification is required, then the applicant should make a statement acknowledging that the agreement will be notified and reference a white paper, if appropriate, as an attachment to the agreement which will provide additional information on the agreement (i.e., offset details, etc.).*

*Applicant should provide a statement regarding "Prior Approval or Prior Notification" in accordance with ITAR 126.8 and a history of licenses to export data and hardware related to this submission, if applicable.*

If you require additional information, please contact (*list license point of contact*) at telephone number (*area code and number*), e-mail *name@company.com*.

Sincerely,

*Signature block*

Attachments:

Proposed Agreement

Certification Letter, per ITAR 126.13 (*This language may be included in transmittal letter if signed by empowered official.*)

Form DSP-83 (*if applicable*)

## **4.0 SAMPLE AGREEMENT FOR A TECHNICAL ASSISTANCE AGREEMENT (TAA) OR MANUFACTURING LICENSE AGREEMENT (MLA)**

The agreement is the official part of the submission package that is signed by all participating parties and serves as the medium for detailing the scope of the effort and the roles each participant will play in the effort. It is the only part of the submission package that the foreign party(ies) must see, since it requires their approval and signature.

It is recommended that the agreement be reviewed by the foreign party prior to submitting to DTCL so that the parties can work out problems with the language or details on the transaction. In the official approval letter from DTCL, the applicant may be directed to make changes to the agreement via provisos. These changes must be made prior to signing by the parties.

**Do not embed an ITAR agreement into a business contract.** These types of agreements are not suitable for the purpose described in these guidelines. The following is the preferred format to provide all the details required by U.S. Government reviewers.

The applicant must state each clause in ITAR 124.8 (and 124.9 for an MLA) **verbatim** from the ITAR and is not allowed to alter them in any way. Modifications to these clauses will result in disapproval of the request.

The format herein is provided for either a TAA or MLA and, when appropriate, explains where differences between these submittals exist. Items in italics explain information to be provided by the applicant.

This agreement is entered into between (*company name*), an entity incorporated in the State of (*state*) with offices at (*company address*) and (*foreign company name(s)*) whose office(s) is/are situated at (*foreign company address(es)*) and is effective upon the date of signature of the last party to sign the agreement. (*If the agreement has a large number of parties involved, then list in bullet format for ease of review.*)

WHEREAS, (*applicant name*) (*Describe the program for which you are providing technical assistance (or manufacturing for) and the type of assistance you will provide.*)

WHEREAS, (*foreign or other U.S. company name*)(*describe the company's role in the TAA or MLA – have a separate paragraph for each foreign company*)

NOW THEREFORE, the parties desire to enter into the Technical Assistance (*or Manufacturing Licensing*) Agreement as follows:

1. This Technical Assistance (*or Manufacturing Licensing*) Agreement is intended to (*Provide concise summary of program to be done under the agreement. This summary can be drawn from the Statement of Work. The Statement of Work can be a separate document attached to the TAA or MLA and incorporated by reference within the agreement.*) This agreement expires on (*date – must have a date and not a duration period*).
2. It is understood that this Technical Assistance (*or Manufacturing Licensing*) Agreement is entered into as required under U.S. Government Regulations and as such, it is an independent agreement between the parties, the terms of which will prevail, notwithstanding any conflict or inconsistency that may be contained in other arrangements between the parties on the subject matter.
3. The parties agree to comply with all applicable sections of the International Traffic in Arms Regulations (ITAR) of the U.S. Department of State and that more particularly in accordance with such regulations the following conditions apply to this agreement:

#### **I. ITAR 124.7**

(1) (*Describe the defense **article to be manufactured** and all **defense articles to be exported** in furtherance or support of this agreement (see Section 9.2 and 9.4 of these guidelines). They should be described by military nomenclature, contract number, National Stock Number, name plate data, or other specific information. If no hardware is being manufactured or exported, then state so but do not leave blank. Values of the defense articles do not need to be stated in the agreement, only the Transmittal Letter.*)

*Note: Only defense articles listed in the agreement or on an addendum sheet and referenced here will be eligible for export under the exemption in ITAR 123.16(b)(1) or by separate license (i.e., DSP-5, DSP-73, etc.). Therefore, if specific articles of hardware or specific documents are to be exported under the agreement, include them as an addendum listing all articles, including quantity, nomenclature, description, USML category and value.*

(2) (*Describe the assistance and technical data involved – see Section 12.0 of these guidelines.*)

(3) *(Specify the end date – not to exceed ten years from end of the current year.)*

(4) *(Specifically identify the countries or areas in which manufacturing, production, processing, sale or other form of transfer is to be licensed or sub-licensed. If sub-licensing is requested, the information required in Section 10.1 of these guidelines must be provided.)*

## **II. ITAR 124.8**

*The following statements must be included verbatim as written in the ITAR.*

(1) This agreement shall not enter into force, and shall not be amended or extended without the prior written approval of the Department of State of the U.S. Government.

(2) This agreement is subject to all United States laws and regulations relating to exports and to all administrative acts of the U.S. Government pursuant to such laws and regulations.

(3) The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government.

(4) No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of the U.S. Government's approval of this agreement.

(5) The technical data or defense service exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a person in a third country or to a national of a third country except as specifically authorized in this agreement unless the prior written approval of the Department of State has been obtained.

(6) All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement.

## **III. ITAR 124.9** *(required for MLAs only)*

*All Manufacturing Licensing Agreements must include the clauses verbatim as required by ITAR 124.9(a).*

(1) No export, sale, transfer or other disposition of the licensed article is authorized to any country outside the territory wherein manufacture or sale is herein licensed without the prior written approval of the U.S. Government unless otherwise exempted by the U.S. Government. Sales or other transfers of the licensed article shall be limited to governments of countries wherein manufacture or sale is hereby licensed and to private entities seeking to procure the licensed article pursuant to a contract with any such government unless the prior written approval of the U.S. Government is obtained.

(2) It is agreed that sales by licensee or its sub-licensees under contract made through the U.S. Government will not include either charges for patent rights in which the U.S. Government holds a royalty-free license, or charges for data which the U.S. Government has a right to use and disclose to others, which are in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon their use and disclosure to others.

(3) If the U.S. Government is obligated or becomes obligated to pay to the licensor royalties, fees, or other charges for the use of technical data or patents which are involved in the manufacture, use, or sale of any licensed article, any royalties, fees or other charges in connection with purchases of such licensed article from licensee or its sub-licensees with funds derived through the U.S. Government may not exceed the total amount the U.S. Government would have been obligated to pay the licensor directly.

(4) If the U.S. Government has made financial or other contributions to the design and development of any licensed article, any charges for technical assistance or know-how relating to the item in connection with purchases of such articles from licensee or sub-licensees with funds derived through the U.S. Government must be proportionately reduced to reflect the U.S. Government contributions, and subject to the provisions of paragraphs (a)(2) and (3) of this section (*be sure you properly reference the paragraph numbering system used in the agreement and not just repeat the ITAR numbering*), no other royalties, or fees or other charges may be assessed against U.S. Government funded purchases of such articles. However, charges may be made for reasonable reproduction, handling, mailing, or similar administrative costs incident to the furnishing of such data."

(5) The parties to this agreement agree that an annual report of sales or other transfer pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient, shall be provided by (*applicant or licensee*) to the Department of State." This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. See ITAR 126.10(b) of this subchapter.

(6) (*Licensee*) agrees to incorporate the following statement as an integral provision of a contract, invoice, or other appropriate document whenever the licensed articles are sold or otherwise transferred:

These commodities are authorized for export by the U.S. Government only to (*state the country of ultimate destination or approved sales territory*). They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State.

*Additionally, MLA's for the production of SME must include the clauses verbatim required by ITAR 124.9(b).*

(1) A completed Nontransfer and use Certificate (DSP-83) must be executed by the foreign end-user and submitted to the Department of State of the United States before any transfer may take



place. *Note: No substitute may be made for a DSP-83 (e.g., end user's certificate or a DSP-83 like document modified by the foreign party).*

(2) The prior written approval of the U.S. Government must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside of the approved sales territory.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed effective as of the day and year above provided.

---

*(signature block for U.S. person)*

---

*(signature block for foreign person)*

**5.0 SUGGESTED FORMAT  
FOR A  
TRANSMITTAL LETTER  
AMENDMENT  
  
TO A  
TECHNICAL ASSISTANCE AGREEMENT  
OR  
MANUFACTURING LICENSE AGREEMENT**

Once approved, changes to the agreement must be made via an amendment (see Section 2.4 of these guidelines). The Transmittal Letter for an amendment is very similar to the agreement. It provides an executive summary of the proposed agreement, and is for U.S. Government use only. The letter still requires export and technical information per ITAR 124.12 and these guidelines.

If the submission is missing important information in the Transmittal Letter, the agreements officer may contact the company for additional information to correct the problem. Any new material passed to DTCL will become part of the submission package.

The suggested format herein is provided for either a TAA or MLA, and when appropriate, explains where differences between these submittals exist. It is a near exact replication of the original Transmittal Letter submitted for the baseline agreement, but has a “NO CHANGE” or “CHANGE” after each required ITAR 124.12 statement. It is also recommended that all changes be bolded for ease of review. Items in italics explain information to be provided by the applicant.

(Date)

Applicant code:

Mr. Peter J. Berry  
Director, Office of Defense Trade Controls Licensing  
2401 E Street N.W.  
Suite 1200 (SA-1)  
Washington, D.C. 20522-0112

Subject: Proposed Amendment No. *X* to (*state original case number*) between (*state U.S. company(ies)*) and (*state foreign party(ies) with country*) for Technical Assistance / Manufacturing License Agreement relating to (*state purpose of original agreement*)

Reference: DTCL Case (*original case number*) (*list any precedent cases that are directly relative to the amendment*)

Dear Mr. Berry:

Submitted herewith are (*X - see Section 11.2 of these guidelines for number of copies*) **collated** copies of this submission package for proposed Amendment No. 1 (*or amendment number*) to the Technical Assistance (*or Manufacturing Licensing*) Agreement, between (*U.S. company(ies)*) and (*foreign party(ies) with country*) covering (*state purpose of original agreement*). (*Company name*) and the foreign party(ies) now desire to modify the agreement to (*brief explanation for the amendment – i.e., scope change, extension, add parties, etc.*).

### **OBJECTIVE OF AMENDMENT**

*Provide a full list of the changes being requested in this proposal. Provide in bullet format. Make a short explanation of why each change is being made (purpose). Examples of modifications include but are not limited to:*

- Expand scope to include:
  - Addition of new parts or components.
  - Expansion of Statement of Work.
  - Transfer of additional technical data.
  - Increase of hardware for export.
  - Expansion of sales or marketing territory to add (*country*).
  - Addition of new programs (*list program or projects*).
- Extend term of agreement from (*current date*) to (*proposed date*).
- Add U.S. or foreign parties.
- Make administrative changes.
- Change name of U.S. or foreign signatory from (*company*) to (*company*).
- Increase value of agreement.

## **ORIGINAL PURPOSE OF AGREEMENT**

*Provide a brief description (one or two paragraphs) of the original purpose of the agreement, how the agreement is being executed, who are the end-users, what is the scope of the effort, and an explanation of the commodity or program. The level of detail required here depends upon the nature of the amendment request (i.e., scope changes will required more details than administrative changes). Bullet format is preferred.*

## **RELATIONSHIP TO ORIGINAL APPROVAL**

*If pertinent to the amendment being requested, provide information on the type of technology or data or hardware that has already been approved for transfer by the U.S. Government for this agreement. If the amendment does not require a detailed analysis of the technology being transferred (i.e., novations, administrative changes, short extensions, etc.), then minimal information may suffice. Attachments can be referenced with more detailed information, but a short description here is still required.*

*Explain how the modifications in this amendment relate or differ from what was originally approved (i.e., similar type of parts but..., approved for the wing hydraulic cylinders and now adding the stabilators, adding a concept study to the design review which was not previously asked for, etc.). If pertinent, describe any new technology (technical data) that will be transferred with this amendment. If no new technology will be transferred, then state that. State whether any precedence of exports have been approved that may relate or pertain to this amended request. Attachments can be referenced with more detailed information, but a short description is still required here. Again, bullet format is preferred.*

## **REQUIRED INFORMATION**

In accordance with ITAR 124.12, the following information is provided: *Indicate if there has been a change to any of the original information in the letter of transmittal by including the applicable statements in the format below with the indicated “CHANGE” or “NO CHANGE.”*

**(a)(1)** DDTC Applicant Code is: NO CHANGE.

**(a)(2)** The foreign licensee(s) is/are (foreign party(ies)). NO CHANGE. The purpose of this amendment is (provide a general description, i.e., change scope, etc.). CHANGE. The agreement is valid through (must provide an actual calendar date). NO CHANGE.

**(a)(3)** Applicant must identify relevant U.S. Government contracts under which equipment or technical data was generated, improved or developed and supplied to the U.S. Government. NO CHANGE.

**(a)(4)** The highest U.S. military security classification of the equipment or technical data to be transferred under the terms of this agreement is: (DoD security classification and/or any foreign classification). NO CHANGE.

**(a)(5)** Applicant must state whether any patents are on file concerning this agreement as required by ITAR 124.12(a) (5). If so, the patents must be listed herein. NO CHANGE.

**(a)(6)** Applicant must provide a statement indicating the actual or estimated value of the agreement, broken out as described in Section 9.1 of these guidelines and shown in the example table below. For all amendments, the total value change and new totals for each row on the table must be provided. The applicant can describe pertinent details to the value breakout deemed necessary to explain the case, however, the table will generally cover the pertinent details required. If no change in the agreement is required in the amendment, then the applicant must make that statement and explain why the value has not changed. It is the option of the applicant to provide a column of each past amendment (which is a better approach) or just the “Currently Approved” column. CHANGE.

*Example:*

	Currently Approved	Proposed Amendment	New Total
<b>Technical Data</b>	<b>\$100,000</b>	<b>\$50,000</b>	<b>\$150,000</b>
<b>Defense Services</b>	<b>\$500,000</b>	<b>\$50,000</b>	<b>\$550,000</b>
<b>Hardware</b>			
Permanent Export by DSP-5	\$500,000	\$200,000	\$700,000
Temporary Export by DSP-73	\$200,000	\$0	\$200,000
Temporary Import by DSP-61	<u>\$100,000</u>	<u>\$0</u>	<u>\$100,000</u>
<b>Total Hardware</b>	<b>\$800,000</b>	<b>\$200,000</b>	<b>\$1,000,000</b>
<b>Hardware Manufactured Abroad (MLA only)</b>	<b>\$1,500,000</b>	<b>\$1,000,000</b>	<b>\$2,500,000</b>
<b>TOTALS</b>	<b>\$2,900,000</b>	<b>\$1,300,000</b>	<b>\$4,200,000</b>
<b>Other Values of Interest to DTCL</b>			
Imported Hardware Procured Abroad (TAA only)	\$500,000	\$50,000	\$550,000
Non-ITAR Hardware for Export	\$100,000	\$0	\$100,000
Repair or Replacement Export	\$900,000	\$0	\$900,000

*If the agreement for the first time exceeds a value of \$500,000 or greater to the armed forces of a foreign government an international organization, an additional statement must be made regarding the payment of political contributions, fees or commissions, pursuant to ITAR 130. If none have been paid, a statement must be made that no payments have been made.*

**(a)(7)** Applicant must provide a statement indicating whether any foreign military sales credits or loan guarantees are or will be involved in financing the agreement. NO CHANGE.

**(a)(8)** The agreement must describe any classified information involved and identify, from DoD form DD 254, the address and telephone number of the U.S. Government office that classified the information and/or the classification source (i.e., document). If no classified information is involved, state so, but do not leave blank. NO CHANGE.

**(a)(9)** *For agreements that may require the export of classified information, the Defense Security Service cognizant security offices that have responsibility for the facilities of the U.S. parties to the agreement shall be identified. The facility security clearance codes of the U.S. parties shall also be provided. NO CHANGE.*

## **REQUIRED STATEMENTS**

*These statements need to be verbatim and relate to the proposed amended agreement.*

**(b)(1)** If the agreement is approved by the Department of State, such approval will not be construed by the applicant as passing on the legality of the Amendment from the standpoint of antitrust laws or other applicable statutes, nor will (*applicant*) construe the Department's approval as constituting either approval or disapproval of the business terms or conditions between the parties to this agreement.

**(b)(2)** The applicant will not permit the proposed agreement to enter into force until it has been approved by the Department of State.

**(b)(3)** The applicant will furnish to the Department of State one copy of the signed agreement within 30 days from the date the agreement is concluded and will inform the Department of State of its termination not less than 30 days prior to the expiration and provide information on the continuation of any foreign rights or the flow of technical data to the foreign party. If a decision is made not to conclude the proposed agreement, (*applicant*) will so inform the Department within 60 days.

**(b)(4)** If this agreement grants any rights to sub-license, it will be amended to require that all sub-licensing arrangements incorporate all the provisions of the basic agreement that refer to the U.S. Government and the Department of State (i.e., ITAR 124.8 and 124.9).

*The applicant must provide a statement whether **sub-licensing rights** are or have been granted to the licensee(s) under the agreement or if the foreign party plans to subcontract part of their effort to other companies. If in this amendment, the applicant is asking for the first time to grant sub-licensing rights, then the information required in Section 10.1 of these guidelines on sub-licensing must be followed.*

*Letters of transmittal for amendments should still make one of the following statements regarding hardware:*

No defense articles will be shipped in furtherance of this agreement. Only technical data or other defense services will be provided.

*or*

Defense articles intended for export in furtherance of this agreement will be shipped via separate license (e.g., DSP-5, DSP-73, etc.).

or

Pursuant to ITAR 123.16(b)(1), the items intended for export are identified by item, quantity and value in (*state annex, appendix, etc.*). Pursuant to ITAR 126.13(b), freight forwarders, end users, and consignees are listed. The items are not classified, are not SME, are not Missile Technology Control Regime (MTCR) articles (*see ITAR 121.16*) and are not articles for which a Congressional notification will be required (*see ITAR 123.15*).

This agreement relates to the following U.S. Munitions List category(ies): (*list applicable USML category and article from ITAR 121*). These category(ies) are/are not designated as Significant Military Equipment (SME).

A Nontransfer and use Certificate, Form DSP-83, as required for the transfer of SME, classified articles or classified technical data is/is not required for this amendment in accordance with ITAR 124.10.

### **SALES REPORT SUMMARY**

*For an MLA amendment, provide a table reporting sales by year and with total sales to date. This table does not replace the need to submit annual sales reports in accordance to ITAR 124.9(a)(5).*

Year	Dollar Value
2001	
2002	
2003	
Total	

*If the proposed amendment requires Congressional notification or re-notification of the agreement (see Section 10.3 for Congressional thresholds), then the applicant must make a statement acknowledging that the agreement will be notified and reference a white paper, if appropriate, as an attachment to this agreement which will provide additional information on the amendment (i.e., offset details, etc.).*

If you require additional information, please contact (*list point of contact*) at telephone number (*area code and number*) and email (*email address*).

Sincerely,

*Signature block*

#### **Attachments:**

1. Certification Letter (*ITAR 126.13 language may be included in transmittal letter if signed by empowered official*)
2. Proposed Amendment (*preferably unsigned*)
3. Form DSP-83 (*if applicable*)

## **6.0 SAMPLE AMENDMENT TO AN AGREEMENT FOR A TECHNICAL ASSISTANCE AGREEMENT OR MANUFACTURING LICENSE AGREEMENT**

Once an agreement is approved, changes to it must be made via an amendment (see Section 2.4 of these Guidelines). Like the agreement, the amendment is the official part of the submission package which is signed by all participating parties and serves as the medium for detailing the change to the effort. It is the only part of the submission package that the foreign party(ies) must see, since it requires their approval and signature. The Transmittal Letter does not have to be presented to the foreign party as it is considered a direct letter to DTCL from the applicant. It should, however, match the changes stated in the amendment.

It is recommended that the amendment be reviewed by the foreign party prior to submitting to DTCL so that the applicant and they can work out problems with the language or details on the transaction.

There are three approaches to the format for an amendment to an agreement. (1) The applicant can provide a brief paragraph describing each modification to the agreement and state that these changes should effect the entire agreement as previously written. (2) The applicant can provide a line-by-line change-out for every part of the original agreement that needs to be changed. (3) The applicant can rewrite the entire agreement and bold in the changes that are being proposed – this format will require additional review time. Format (1) is the preferred method due to the ease of review; however, the other methods can be better for certain types of amendments.

The format herein is provided for either a TAA or MLA, and when appropriate, explains where differences between these submittals exist. Items in italics explain information to be provided by the applicant.



Technical Assistance Agreement/Manufacturing License Agreement between (*company name*) and (*foreign company(ies) name(s)*) relating to (*describe the program or effort of the agreement*) (*agreement number*). AMENDMENT No. (*agreement number or letter*)

WHEREAS, (*company name*) and (*foreign company name*) have entered into the subject agreement on (*date*); and

WHEREAS, in order that (*company name*) may be in a position to furnish to (*foreign company*) upon request such remaining (*time*) of defense services and articles (*as applicable*), (*company name*) and (*foreign company*) desire to modify the subject agreement to (*state purpose for amendment*). This agreement expires on (*date*).

NOW, THEREFORE, (*company name*) and (*foreign company*) agree as follows:

1. *List and number each change being requested.*

Except as modified above, in every other respect, the subject Agreement shall continue in force and effect unchanged.

If the foregoing is acceptable, please so signify by signing this document in duplicate and returning both executed originals for countersigning by (*company name*). One fully executed copy will be returned for your file whereupon this letter shall constitute Amendment No. (X) to the aforesaid agreement which amendment shall become effective upon its approval by the Government of the United States.

Accepted and Agreed to:

(*foreign company*)

By

Title \_\_\_\_\_

Date \_\_\_\_\_

(*applicant name*)

By

Title \_\_\_\_\_

Date \_\_\_\_\_

## **7.0 SUGGESTED FORMAT FOR A PROVISO RECONSIDERATION**

If the applicant feels that a proviso provided by DTCL in an approval letter to an agreement is too restrictive, they can submit a “Proviso Reconsideration” to ask the U.S. Government for relief or rewording of the proviso. This process can also serve for “Clarification of a Proviso” if the applicant is unclear on the restrictions of a particular proviso and wants more insight or to ask a specific question on the proviso.

The applicant must state what the problem is (i.e., that it is “too restrictive,” “in error,” or “not applicable”), and then provide the justification for the Government to support the change or deletion of the proviso.

The format for a Proviso Reconsideration is that of a DTCL General Correspondence (GC) letter. However, DTCL will record the submission as an amendment to the agreement to maintain accountability on that file. The following format serves as a sample of a submission for such a request. The applicant must also provide an ITAR 126.13 Certification (Empowered Official) Letter and a copy of the DTCL approval letter with the provisos of concern. There is no limit to the number of provisos that the applicant may inquire about in a single submittal.

(Date)

Applicant code:

Mr. Peter J. Berry  
Director, Office of Defense Trade Controls Licensing  
2401 E Street N.W.  
Suite 1200 (SA-1)  
Washington, D.C. 20522-0112

Subject: Request reconsideration of proviso(s) (*proviso numbers*) to (*state original case number*) between (*state U.S. company(ies)*) and (*state foreign party(ies) with country*) for Technical Assistance / Manufacturing License Agreement relating to (*state purpose of original agreement*)

Reference: DTCL Case (*original case number*) (*list any precedent cases that are directly relative to the amendment*)

Dear Mr. Berry:

Submitted herewith 7 **collated** copies of this submission package for proposed reconsideration of provisos (*proviso numbers*) in (*agreement or amendment number*) to the Technical Assistance (*or Manufacturing Licensing*) Agreement, between (*U.S. company(ies)*) and (*foreign party(ies) with country*) covering (*state purpose of original agreement*). (*Company name*) and the foreign party(ies).

(*Applicant*) is asking for reconsideration of Provisos (*list each proviso*) from the DTCL approval letter (*state agreement or amendment number*) dated (*date*).

*List each proviso of concern one at a time, and provide a description of the problem with justification and a recommendation to either delete or change the proviso. If requesting a change, recommend new wording.*

If you require additional information, please contact (*list point of contact*) at telephone number (*area code and number*) and email (*email address*).

Sincerely,

*Signature block*

Attachment:

1. Original DTCL Approval Letter

## **8.0 SAMPLE CERTIFICATION LETTER (ITAR 126.13)**

The following sample letter, written on the applicant's letterhead with original signature and current date, is recommended as a suggested **one-page** format that will satisfy the requirements of ITAR 126.13 when there is no conviction, indictment or ineligibility to declare. This letter is required for all MLA/TAA requests, including amendments. The information may be included in the Transmittal Letter for the TAA or the MLA.

(Date)

Mr. Peter J. Berry  
Director, Office of Defense Trade Controls Licensing  
2401 E Street N.W., Suite 1200 (SA-1)  
Washington, D.C. 20522-0112

Dear Mr. Berry:

I, *the undersigned*, am a U.S. person as defined in ITAR 120.15 and I am a responsible official empowered by the applicant to certify the following in compliance with ITAR 126.13:

1. Neither the applicant, its chief executive officer, president, vice presidents, other senior officers or officials (e.g. comptroller, treasurer, general counsel) nor any member of its board of directors is:

a. the subject of an indictment for or has been convicted of violating any of the U.S. criminal statutes enumerated in ITAR 120.27 since the effective date of the Arms Export Control Act, Public Law 94-329, 90 Stat. 729 (June 30, 1976); or

b. ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from any agency of the U.S. Government;

2. To the best of the applicant's knowledge, no party to the export as defined in ITAR 126.7(e) has been convicted of violating any of the U.S. criminal statutes enumerated in ITAR 120.27 since the effective date of the Arms Export Control Act, Public Law 94-329, 90 Stat. 729 (June 30, 1976), or is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from any agency of the U.S. Government, and

3. The natural person signing the application for the license or other request for approval is a responsible official who has been empowered by the applicant and (INSERT ONLY ONE) is a citizen of the United States, OR has been lawfully admitted to the United States for permanent residence and maintains such a residence under the Immigration and Nationality Act (8 U.S.C. 1101(a) 20, 60 Stat. 163), OR is an official of a foreign government entity in the United States.

*NOTE: Letters accompanying any agreement application requesting the use of ITAR 123.16 should make one of the following statements as well:*

The enclosed application form includes the complete names and addresses of all U.S. consignors and freight forwarders, and all foreign consignees and foreign intermediate consignees involved in the transaction;

or

I have enclosed an original and 1 copy of an addendum sheet prepared in accordance with ITAR 126.13(b) listing the complete names and addresses of all U.S. consignors and freight forwarders (and, if applicable, all foreign consignees and foreign intermediate consignees) involved in the transaction.

or

The following information is provided pursuant to ITAR 126.13(c) to explain why all the U.S. consignors and freight forwarders, and all foreign consignees and intermediate consignees cannot be specifically identified on the application form or addendum sheet.  
*(Provide Explanation)*

Sincerely,

*Name of Official*  
*Title*

## 9.0 ESTABLISHING VALUE AND HARDWARE EXPORTS

### 9.1 VALUATION BREAKOUT

In every agreement, the applicant must provide a statement indicating the actual or estimated value of the agreement (ITAR 124.12(a)(6)). The value of an agreement is not always a contract or payment value that the applicant may receive. Even if the applicant is providing their service without charging the foreign party(ies), there is a cost to the applicant that must be conveyed in the agreement.

The value of an agreement is broken out into key elements and then added as a total. This total value is that assigned against the agreement by DTCL as a means to assess the level of effort being exerted in the agreement. This may not directly reflect a straight contract price. The key elements of the valuation are:

- **Defense Service** – usually defined as the manpower costs incurred by the U.S. company in the agreement.
- **Technical Data** – the value assigned to the technical data being transferred to the foreign parties.
- **Exported Hardware** – the value of all USML hardware being exported by the applicant, which includes using the ITAR 123.16(b)(1) exemption to export or a separate license (DSP-5, DSP-73, etc.).
- **Manufactured Hardware** (MLA only) – production or sale value of defense articles being manufactured abroad. (Do not count the value of exported articles incorporated into manufactured end-items as they will be **double-counted** when adding the sale of the manufactured items – see Double Counting in Section 10.3 of the Guidelines.)

The applicant must address each of the key elements, even though there may be no fee pertaining to, or a \$0 value attributed to a particular element. The value of each of these elements can be an **estimate**, but must extend over the duration of the agreement and not beyond. Applicants have often not been able to work out the level of detail to define actual costs at the time of submission and therefore must work with estimates.

Valuation elements may be broken into program phases, export categories, manufacturing sections, or other ways that the applicant feels best represents their case. The applicant must total all values in the Transmittal Letter as illustrated in the example table below for an amendment to an agreement. If easier for the applicant, the Technical Data and Defense Service may be presented as one value.

**Hardware Export Value.** Any agreement that involves the export of hardware, regardless of the mechanism used to export (ITAR 123.16(b)(1) or a separate license), must provide a value of the hardware in the Transmittal Letter and a description of the hardware in the agreement per ITAR 124.7(1). If the applicant is shipping defense articles in furtherance of the agreement, then a separate license (i.e., DSP-5, DSP-85) will be obtained to export – see Section 9.4 of these guidelines.

*Example for an Amendment:*

	Currently Approved	Proposed Amendment	New Total
<b>Technical Data</b>	<b>\$100,000</b>	<b>\$50,000</b>	<b>\$150,000</b>
<b>Defense Services</b>	<b>\$500,000</b>	<b>\$50,000</b>	<b>\$550,000</b>
<b>Hardware</b>			
Permanent Export by DSP-5	\$500,000	\$200,000	\$700,000
Temporary Export by DSP-73	\$200,000	\$0	\$200,000
Temporary Import by DSP-61	<u>\$100,000</u>	<u>\$0</u>	<u>\$100,000</u>
<b>Total Hardware</b>	<b>\$800,000</b>	<b>\$200,000</b>	<b>\$1,000,000</b>
<b>Hardware Manufactured Abroad (MLA only)</b>	<b>\$1,500,000</b>	<b>\$1,000,000</b>	<b>\$2,500,000</b>
<b>TOTALS</b>	<b>\$2,900,000</b>	<b>\$1,300,000</b>	<b>\$4,200,000</b>
<b>Other Values of Interest to DTCL</b>			
Imported Hardware Procured Abroad (TAA only)	\$500,000	\$50,000	\$550,000
Non-ITAR Hardware for Export	\$100,000	\$0	\$100,000
Repair or Replacement Export	\$900,000	\$0	\$900,000

**Repair and Replacement Hardware.** When an applicant has a TAA or MLA that may need to temporarily export repair or replacement items procured from the foreign licensee in an agreement, the estimated value on these defense articles will not be included in the total value of the agreement. It is required that the applicant indicate if the agreement may require repair or replacement, but this type of export will no longer be considered in furtherance of an agreement and therefore is not accountable in the agreement. The applicant will need to apply for a separate DSP-73 license, which should reference, but will not need to be valued against, the agreement.

**Amendments.** This process is also applicable to estimating the value of amendments. Some amendments are administrative in nature and have, by definition, no value (e.g., novations). However, amendments that add items, expand the scope, expand the sales territory or extend the duration of an agreement almost certainly will change the value of the basic agreement, and thus an estimated value of the amendment must be submitted.

**Values Requested, But Not Added to Agreement.** The following consists of values that are of interest to be presented in 124.12(a)(6) of the agreement, but should not be added to the total value of the agreement.

- Imported Hardware Procured Abroad (TAA only) – cases where build-to-print schematics are provided instead of manufacturing know-how (therefore the agreement is a TAA instead of an MLA). The manufactured items are being sold back to the U.S., but not under an MLA.
- Non-ITAR Hardware – (e.g., value of computers, raw materials, etc.)
- Repair and Replacement Hardware – see explanation above.



### **Helpful Methods to Measure Agreement Values**

Because agreements can vary so widely in different situations, the following information may be of use to estimate a value.

- **Actual Contract Price.** The amount the applicant actually receives for the service provided can be the value of defense services and technical data.
- **Objective Contract Value.** The amount the applicant would charge for the service if it were being offered independently of offset or teaming arrangements.
- **Estimated Sales of the Article(s).** The value of sales of the article, including royalties over the agreement period. In the case of MLAs, use the estimated total value of all licensed articles to be produced by the foreign licensee.
- **Impact of Disapproval.** The cost to the applicant if the agreement is not approved.
- **Man-hours.** The cost of the man-hours expended by the applicant for this program. This should include engineering, technician, program management and overhead expenses.

If an applicant is able to calculate an answer to more than one of these questions, it should include the cumulative total of all the answers as the value in its letter of transmittal.

### **9.2 DEFENSE ARTICLES SHIPPED VIA ITAR 123.16(b)(1) EXEMPTION**

The ITAR provides an “exemption” for the permanent export of unclassified hardware without an export license (i.e., DSP-5) in ITAR 123.16(b)(1). This exemption is provided for those situations where (1) the exact numbers of items to be exported are identified and valued, (2) one-time shipment is requested, and (3) the hardware meets the requirements below. The objective is to provide an easier means to export on cases where all hardware exports are known.

#### **Situations Where ITAR 123.16(b)(1) Exemption Does NOT Apply.**

1. Proscribed destinations listed under ITAR 126.1;
2. Exports for which Congressional notification is required;
3. Missile Technology Control Regime (MTCR) articles;
4. Significant Military Equipment (SME);
5. Classified articles; and
6. Use by persons who are ineligible as described in ITAR 120.1(c).

**Conditions to Use ITAR 123.16(b)(1).** The following conditions must be met in order for exporters to utilize this exemption:

1. The defense article to be exported must be in furtherance of the agreement and be identified by item, quantity and value in an addendum to the agreement (see Section 4.0 of these guidelines).
2. Any provisos or limitations placed on the authorized agreement must be adhered to.
3. The total value of all defense articles must not exceed the value authorized in the agreement.

**Shipper's Export Declaration (SED).** If all the conditions for this exemption are met, the exporter must file a Shipper's Export Declaration (SED) with Customs or a Postmaster, and must certify on the SED that the export is exempt from the licensing requirements of the ITAR by including the statement "ITAR 123.16(b)(1) and TA/MA (*identify agreement number*) applicable." A copy of each such SED must be mailed immediately by the exporter to DTCL. The following retransfer statement required by ITAR 123.9(b) must be included as an integral part of the bill of lading and the invoice:

These commodities are authorized by the U.S. Government for export only to (*county of ultimate destination*) for use by (*end-user*). They may not be transferred, transshipped on a non-continuous voyage, or otherwise be disposed of in any other country, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State.

**Amending Hardware with ITAR 123.16(b)(1).** Because this export exemption is a one-time shipment, the agreement cannot be amended to export additional hardware after the original shipment has been exported. The agreement can, however, be amended to change the quantities, values or even add additional types of hardware as long as the shipment has not been exported. In this case, the Addendum A attachment must be totally revised with the full listing of hardware in the amendment request. If additional hardware needs to be exported against an agreement after the original shipment has been exported, then the applicant must request a separate license (i.e., DSP-5) in the amendment for the export. The ITAR 123.16(b)(1) exemption cannot be used more than once in support of the same agreement.

### 9.3 SAMPLE ITAR 123.16(b)(1) ADDENDUM FORMAT

#### ADDENDUM A

DDTC Registration Code:

Applicant Name and Address:

Foreign End-User Name and Address:

Foreign Consignee Name and Address:

Foreign Intermediate Consignee Name and Address:

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***Consignor/ Freight Forwarder:***  
*(Use continuation page if needed)*

Items to be shipped pursuant to ITAR 123.16(b)(1):

Manufacturer	Commodity	Quantity	USML Category	Value
			<b>Total Value</b>	<b>\$</b>

## 9.4 EXPORTING HARDWARE VIA SEPARATE LICENSE IN FURTHERANCE OF AN AGREEMENT

**DEFINITION: “Hardware exported in furtherance of an agreement”** – When the export of defense articles by the applicant is necessary for the fulfillment of the agreement. This type of export will be included in the value of the agreement.

**DEFINITION: “Hardware exported in support of an agreement”** – When defense articles are to be exported by another U.S. company indirectly relating to the agreement submitted by the applicant. This type of export will **not** be included in the value of the agreement.

**Requirements for an Agreement that Contemplates Hardware Export Via a Separate License.** When shipping hardware in furtherance of an agreement on a license request (i.e., DSP-5, DSP-73, etc.), the hardware must be identified (described) in the agreement under ITAR 124.7(1) and by value in 124.12(a)(6) of the Transmittal Letter. The more details provided in the agreement on the hardware, the quicker the review process for the license. If intended hardware is left out of the Transmittal Letter value (ITAR 124.12(a)(6)), then a proviso will be given to the applicant stating no hardware is authorized for export via a separate license until the agreement is amended.

**Requirements in a License in Furtherance of an Agreement.** When submitting an export license, the applicant must not only cite in the license that it is in furtherance of an agreement, but should enclose a letter of explanation on the DSP-5, a copy of the applicable DTCL approval letter(s), and the executed agreement as part of the license submission. The applicant should point out the location in the agreement where the hardware is identified. When submitting multiple licenses in furtherance of an agreement, the applicant must report how much hardware, and under what other license(s) hardware has been exported to date.

Because the agreement must be approved before DTCL can assess a license submission that is in furtherance of an agreement, it is not recommended that an applicant submit the license package until the agreement is either approved or nearing completion. Upon receiving the application for an export license, DTCL will review the license against the agreement to verify that the license is within the scope of the agreement, value and description of articles. There is a chance that the license will be Returned Without Action and the applicant told to first update the agreement before reapplying if the scope, value or description varies between the agreement and license.

### **DTCL Hardware Authorized Proviso**

The following is an example of a DTCL agreement proviso that recognizes the export of hardware in furtherance of an agreement.

“Shipment of hardware by separate license is authorized (e.g., DSP-5, DSP-73). **If used, separate license must reference the agreement and must not exceed \$\_\_\_\_\_, over the life of the agreement.** Shipment of hardware against this agreement under the provisions of 22 CFR 123.16(b)(1) is not authorized. **Itemized list of hardware can be found in (*cite location in the agreement*) of the agreement.**”

## 10.0 EXPORT GUIDELINES

### 10.1 SUB-LICENSING

**License** (as described in ITAR 120.20) means an instrument by which DTCL permits the export abroad or temporary import of a specific defense article, technical data or defense service.

**Retransfer** (as described in ITAR 120.19) means the transfer of defense articles or defense services to an end use, end user or destination not previously authorized.

**Sub-Licensing** (as it applies to agreements) is the retransfer to a third party of specific defense articles, technical data or defense services that were approved by DTCL to be exported to a specific foreign party.

**Subcontracting** (as it applies to agreements) is the contracting by a prime contractor of specific support to a third party to aid in the execution of a program or project. If the subcontracting does not include the retransfer to the third party of specific U.S.-origin defense articles, technical data or defense services that were approved by DTCL to be exported to the prime foreign party, then the subcontracting is not classified as sub-licensing. DTCL will put no restrictions on subcontracting.

#### **Guidelines For Sub-Licensing**

**For All Agreements.** If a foreign party is planning to sub-license to another company abroad, then the applicant must provide the roles of the sub-licensees and a description of the technical data (if pertinent) to be retransferred to the sub-licensee. Unless told otherwise in the agreement package, the U.S. Government will assume all technical data in the agreement will be re-transferred to sub-licensees when sub-licensing is requested.

**For Agreements Involving SME.** Due to the sensitive nature of Significant Military Equipment (SME), agreements requiring the retransfer of SME technical data or defense articles to a third foreign party, must list each company, and the country in which they reside, to which the prime foreign party may sub-license. For these cases, the sub-licensee must execute a Non-Disclosure Agreement (NDA) incorporating all the provisions of the basic agreement. Copies of the executed NDAs, referencing the DTCL case number, must be maintained by the applicant for five years from the expiration of the agreement. If sub-licensing is requested in an agreement that involves SME but will not involve the transfer of data or hardware specific to the SME (it must be explained how this will be managed in the agreement), then a company listing may not be warranted.

**For Agreements Not Involving SME.** When an agreement does not involve SME, then the applicant can request approval for the foreign party to sub-license within the territory identified in ITAR 124.7(4) of the agreement. The sub-licensee must execute a Non-Disclosure Agreement (NDA) incorporating all the provisions of the basic agreement, with the applicant maintaining copies of the executed NDAs for five years from the expiration of the agreement. In this

situation, the U.S. Government does not review the list of companies signing the NDAs. Therefore the applicant is responsible to monitor the foreign licensees selection of other foreign parties for sub-licensing and retransfer of their technology.

**For Agreements Involving Sensitive Areas.** A full listing of the sub-licensees may be requested by DTCL prior to approving an agreement. This will depend upon the sensitivity of the commodity, country or the technical data that may be retransferred. The greater the perceived risk to national security, the more likely a full listing will be requested.

**Example of a Non-Disclosure Agreement (NDA).** The following is an example of a NDA that can be generically used for sub-licensees, third country foreign national (Section 10.2 of this guidelines), or foreign national employed in the U.S. (Section 10.8 of this guidelines).

### **NON-DISCLOSURE AGREEMENT** **For DTCL Case \_\_\_\_\_**

I, \_\_\_\_\_, acknowledge and understand that any technical data related to defense articles on the U.S. Munitions List, to which I have access or which is disclosed to me under this license by (*company name*) is subject to export control under the International Traffic in Arms Regulations (Title 22, Code of Federal Regulations, parts 120-130). I hereby certify that such data will not be further disclosed, exported or transferred in any manner, to any other foreign national or any foreign country without the prior written approval of the Office of Trade Controls Licensing, U.S. Department of State.

\_\_\_\_\_  
Signature Block of Foreign Party

\_\_\_\_\_  
Signature of Block of  
Participating Company

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **10.2 THIRD COUNTRY FOREIGN NATIONALS AND DUAL CITIZEN EMPLOYEES**

**Third Country Foreign National Employees.** The U.S. Government does not need each third country foreign national employed by a foreign signatory identified in the agreement. Approval of these individuals is contingent on their country of origin. In this situation, the agreement must specifically list the countries of all third country foreign nationals that may be employed. This information must be covered in the ITAR 124.7(4) statement. Non-Disclosure Agreements (NDAs) must be completed on each individual and kept on file for 5 years after termination of the agreement by the U.S. prime company.

Each agreement will be reviewed with a different level of scrutiny depending upon the sensitivity of the technology and the commodity involved. Some cases may require individuals to be listed due to national security concerns. Most agreements are approved by country, as the integration of world bodies such as the European Union has resulted in a greater number of agreements requiring foreign national employment.

**Dual National Employees.** For dual national employees of a foreign signatory, the dual countries to which these employees share citizenship must be listed in the transfer territory (ITAR 124.7(4)). In this case, the dual national will not be required to sign a Non-Disclosure Agreement as with the third-country foreign national. However, if the U.S. Government feels that transfer of the commodity involved is currently sensitive, a background check may be required on those individuals. Dual nationals of proscribed ITAR 126.1 countries will not be authorized. If the applicant is working with a foreign country that cannot legally request dual citizenship information, then the applicant should contact DTCL.

### 10.3 CONGRESSIONAL NOTIFICATIONS

Congressional notifications for technical assistance and manufacturing license agreements are directed in ITAR 124.11. There are two types of Congressional notifications mandated by Section 36 of the Arms Export Control Act that are handled by DDTC: 36(c) notifications for value and 36(d) notifications for the manufacture of SME abroad. Additionally, Department of State, PM/RSAT handles 36(b) notifications with Department of Defense for Foreign Military Sales (FMS) cases.

#### Congressional Notification Thresholds

**36(c) Notification.** The applicant must be providing for the export of major defense equipment (MDE) defense articles or a total value on a contract that exceeds:

- NATO member countries, Australia, New Zealand and Japan.
  - MDE sales in excess of \$25 million
  - Defense articles/defense services in excess of \$100 million
- All other countries.
  - MDE sales in excess of \$14 million
  - Defense articles/defense services in excess of \$50 million

**Calculating Congressional Notification Value.** Determining the value of the items sold under a contract relative to the Congressional notification thresholds is illustrated in the table below. Those values not bolded are usually counted in the value of an agreement, but not for the value of items sold under a contract, which is the rule for notifying to Congress.

In some agreements, the value of hardware can be counted twice when totaled as required in the ITAR 124.12 (a)(6) section of a Transmittal Letter. When an agreement approaches Congressional notification value thresholds, it is important to calculate the value in accordance with what Congress is concerned about – the contractual value. Therefore, “**Double Counting**” of hardware that can occur in evaluating an agreement must be prevented. The above table helps

illustrate this point. In this example, if the applicant is providing the foreign company \$25M in kits that will be further developed into a final product worth \$30M, then the kits will not be added to the total as they are already represented in the value of the \$30M sale. Additionally, temporary export and import of hardware is eliminated as they do not contribute to this contractual value. However, these values still need to be listed in the ITAR 124.12 (a)(6) statement of a Transmittal Letter in order to assess the export requests in the agreement.

<b>Technical Data</b>	<b>\$500,000</b>
<b>Defense Services</b>	<b>\$500,000</b>
<b>Hardware</b>	
Permanent Export for Tooling or Support Equipment	<b>\$1,500,000</b>
Permanent Export for Kits to be Turned into Sale Item (MLA)	\$25,000,000
Temporary Export	\$200,000
Temporary Import	<u>\$100,000</u>
Total Hardware	\$26,800,000
<b>Total Hardware for Notification</b>	<b>\$1,500,000</b>
<b>Hardware Manufactured Abroad (MLA only)</b>	<b>\$30,000,000</b>
<b>Congressional Notification Value (Total Articles and Services Sold Under a Contract)</b>	<b>\$32,500,000</b>

**36(d) Notification.** Any technical assistance agreement or manufacturing license agreement that involves the manufacture abroad of SME shall be notified regardless of value.

### **Congressional Notification Process**

What follows is a step-by-step explanation of the process for notifying agreements that meet the threshold for 36(c) or 36(d).

- Upon receipt of an agreement requiring Congressional notification, it will be initially staffed similar to any other agreement, but it will require full staffing for both technical and political review.
- After all staffed positions are received, a Congressional notification number (different from agreement case number) is assigned and then the case undergoes a review by the State Department's internal offices for legislative, legal, and public affairs, plus federal budgetary and national security offices prior to being officially sent to Congress.
- Once completed the legislative liaison in the State Department coordinates with Hill staffers to facilitate the certification's review by Congress. This coordination is dependent upon Congressional schedule and availability at the time, which can result in a waiting period, especially if it arrives when Congress is not in session.
- Once the case has been "notified" to Congress, it will be issued either 15 or 30 calendar days later depending on the country (unless Congress has enacted a joint resolution prohibiting the agreement):
  - NATO member countries, Australia, New Zealand and Japan = 15 calendar days from the notification date
  - All other countries = 30 calendar days from the notification date



## **Re-Notification**

The current DTCL practice is to assess an agreement for possible re-notification once the value has reached or exceeded an additional 10% of the original notified value. The re-notification practice also applies to additional SME defense being proposed for manufacture.

In addition, if the scope on a previously notified agreement is expanded, that amendment may also require re-notification.

## **Export Licenses**

Export licenses that would normally require Congressional notification, but that are submitted in furtherance of an agreement or amendment that has been Congressionally notified and are included in the approved hardware value, do not need to be notified to Congress independently.

## **Offsets**

Any submission of an agreement or amendment that will require Congressional notification must state whether there are any offsets involved in the transaction. Offsets are arrangements that ensure the award of a contract. Direct offsets are directly related to the activity in the proposed agreement (i.e., foreign country industrial participation). Indirect offsets are usually related to future contracts or projects that the U.S. applicant plans to conduct with the foreign company or country (i.e., monetary assistance in building a hospital or future sales to that company or country). All notifications must address the percentage of direct and indirect and what these offsets involve.

## **10.4 REMOVING SIGNATORIES PRIOR TO EXECUTING AN AGREEMENT**

If a party to an agreement elects not to sign the agreement, then the applicant can remove the party without having to submit an amendment for approval. However, the applicant must completely remove references to the non-signing party from the agreement before having the agreement signed by the remaining parties. This eliminates any chance that the signing parties would transfer data to a party they thought was still involved in the agreement. Crossing out the parties not signing and having that document signed by the remaining parties is not acceptable. Except for certain satellite insurance cases, transfers cannot take place to any of the parties until all have signed the agreement. Cover letters of the signed copies of a concluded agreement or amendment sent to DTCL must provide notification of the removal of the signatories and reasons why they were removed. This notification should be bolded so that it stands out.

## **10.5 ANNUAL SALES REPORTS FOR MLAs**

- **One** copy of the Annual Sales Report is required.
- For an MLA that was not active in a particular year, a report of “No Sales” is required.
- It is preferred that Annual Sales Reports come to DTCL from the applicant and not directly from the foreign manufacturer.
- Cover letters for Annual Sales Reports do not need to be signed by an empowered official.

- Annual Sales Reports must be in U.S. dollars as required in ITAR 124.9(a)(5).

Sample Format:

DTCL Case\_\_\_\_\_

CY/FY\_\_\_\_\_

Item	Recipient	Quantity	US \$ Value
<b>TOTAL</b>			

## 10.6 SUBMITTING SIGNED AGREEMENTS AND DSP-83s

- **One** copy of the agreement or amendment is required to be sent to DTCL – does not have to be an original signed copy.
- A copy of the DTCL approval letter is not required.
- The original signed DSP-83 must be submitted for those agreements or amendments requiring it.
- If the original DSP-83 was sent in for the export license, then a copy with a letter explaining this must be provided for the agreement.
- Letters **terminating an agreement** need to be brief and clear. Copies of DTCL letters or copies of the signed agreement are not needed.
- When terminating a Manufacturing License Agreement, the applicant must submit a final sales report summary with the termination letter.
- Letters indicating that an **amendment shall not be concluded** need to clearly state that the rest of the agreement is still active. A copy of the DTCL approval letter is not required.
- Cover letters for any of the above copies do not need to be signed by an empowered official.

## 10.7 SPECIAL ALLOWANCE FOR SATELLITE INSURANCE TAA SIGNATORIES

Special provisions are granted to Technical Assistance Agreements involving Satellite Insurance under certain conditions. These provisions allow the U.S. party to provide transfers to foreign signatories as they sign, rather than waiting until all parties have signed and concluded an agreement.

The following lists conditions under which satellite insurance-related agreements may continue to be executed by approved foreign licensees while exports are taking place with existing signatories. It further establishes similar conditions for amendments that only add or change foreign licensees.

- There is a DTCL-approved Technical Assistance Agreement for space insurance providers and underwriters; and
- Foreign licensees are from the countries of NATO, major non-NATO allies, European Union or the European Space Agency (see ITAR 123.27 for specific listing of NATO and major non-NATO countries); and
- There is no defense service (e.g., technical data and /or technical assistance interchange) between the foreign licensees; and
- All U.S. persons have signed the agreement

Then:

- Exports may take place between the U.S. person(s) and a foreign licensee as soon as such foreign person signs the agreement.
  - A copy of the agreement must be provided to DTCL within 30 days of the date signed.
- Any foreign licensee on the original DTCL approval may sign the agreement at any time without any further DTCL approval.
  - As additional approved foreign person(s) sign the agreement, these copies must be provided to DTCL.
- Amendments that only add or change a foreign person need only be signed by the U.S. person(s) and the new foreign person.
  - A copy of the amendment must be provided to DTCL within 30 days of the date signed.

## **10.8 FOREIGN NATIONALS EMPLOYED IN THE U.S.**

### **Submitted as a DSP-5**

The licensing vehicle for most foreign national employment in the U.S. is to be handled using a DSP-5. The DSP-5 is an easier mechanism for processing this type of request. The process for filing for such an “Employment License” can be found on the DDTC Web site on the “Licensing” page (click on “Guidelines for Preparing the DSP-5”).

The license for employment of the foreign national must be renewed every four years under the DSP-5. Only one foreign national employee can be put on a DSP-5, unless more than one shares the same nationalities and job titles.

### **When to Submit as a TAA**

- Whenever the applicant is required to provide the foreign national employee technical training in order to perform the job hired for, then a TAA would be warranted over a DSP-5 because the applicant is now providing a defense service to a foreign entity which requires an agreement. The TAA should follow the guidelines established in Chapter 4.0 of these guidelines, clearly defining the scope of activity under ITAR 124.7(2) and limiting the term of the agreement to no more than 10 years.

- If a foreign national has technical exchanges with other U.S. parties not on the DSP-5 “Employment License,” then a TAA will be required between the foreign national and the other U.S. parties.

The applicant must submit the following support documentation:

- Current job description or Statement of Work.
- Professional work background.
- Copy of work visa.
- Technology Control Plan (TCP) for the site.
- Non-Disclosure Agreement.
- Any supporting documentation.

## 11.0 SUBMITTING AND PACKAGING AGREEMENTS

The following are guidelines regarding the number of hard copies to be provided for U.S. Government review of your case.

### 11.1 NUMBER OF COPIES TO BE SUBMITTED – NEW AGREEMENT

- **Original + 9 Copies:**
  - Requires Congressional notification (see Section 10.3).
  - Highly sensitive commodity, country or transfer (submitters discretion).
- **Original + 7 Copies:**
  - All other new agreements.

### 11.2 NUMBER OF COPIES TO BE SUBMITTED – AMENDMENT

- **Original + 9 Copies:**
  - Requires Congressional notification or re-notification (see Section 10.3).
  - Large scope change involving a sensitive commodity, country or transfer (submitters discretion).
- **Original + 7 Copies:**
  - Expands scope to include:
    - Adds new defense articles.
    - Adds foreign parties from countries outside of those approved for transfer.
    - Adds new defense services.
    - Adds new technology or different technical data for transfer.
    - Expands sales territory (for an MLA).
    - Expands transfer or sub-licensing territory.
  - Reconsiders a technical proviso.
  - Requests an extension greater than 4 years – increase in value must be addressed.
- **Original + 1 Copy:**
  - No expansion in scope, such as:
    - Updates administrative information (some may not require DTCL approval).
    - Novates or changes name of U.S. or foreign parties.
    - Changes address of U.S. or foreign parties.
    - Increases quantity of the same type of defense articles when not SME.
    - Adds foreign parties from the same country of those approved for transfer (unless it is a country where sensitivity is high).
  - Requests an extension 4 years or less – (unless it involves a country or a commodity where sensitivity is high).

Note: When an applicant is intending to submit a large data package (more than one phone book size) with an agreement (see Section 12.0 of these guidelines for data package requirements), then they should contact DTCL to determine the number of copies of the complete data package

that will be required. Providing large data packages on a CD ROM instead of hard copies is highly encouraged.

### **11.3 MINOR AMENDMENTS OR CHANGES NOT REQUIRING DTCL APPROVAL**

A change to an agreement prior to signing likely requires DTCL review and, in many cases, approval. The approval letter issued by DTCL is contingent that the only substantive changes to be made prior to signing are those that DTCL requires in any proviso.

In accordance with ITAR 124.1(d), the applicant can make “Minor Amendments” that do not require DTCL approval. These changes are limited to that which only alters delivery or performance schedules, or are minor administrative amendments which do not affect in any manner the duration or scope. In these cases, the applicant must submit a copy of these changes within 30 days of conclusion. If the changes are made prior to concluding (signing) the original agreement, then a separate submission is not required and the applicant can highlight or explain the changes in the cover letter sent in with the copy of the concluded agreement.

The following changes can be made without DTCL approval as long as they in **no way effect the scope** of the agreement. If made before signing by all parties, these changes need to be highlighted or described in the cover letter when the applicant submits the signed copy to DTCL.

- Corrects typos or minor mistakes in original submission.
- Corrects address of a signatory.
- Corrects the official name of the foreign signatory (not allowed for a major name change).
- Makes minor language changes needed before parties will sign (must not impact the scope as defined in ITAR 124.1(d)).
- Removes a signatory from the agreement (see Section 10.4 of these guidelines).

### **11.4 PACKAGING SUBMISSIONS**

- A certification letter is not necessary in the copies of a submission package. Only **one** signed letter in the original package is required.
- The signature page for an agreement or amendment that has multiple signatories should be printed all on a single page if possible rather than a page for each signature. You can print a page for each signature for the signed copy, but for the proposal, a single sheet is preferred.
- Do not put into binders or notebooks as DTCL does not keep them due to file space.
- For the DTCL (original) copy, please do not use staples as this makes our processing more difficult. Use a large clip to hold together and avoid using smaller clips to separate sections of the proposal. For the copies, staples are fine and preferred.
- Use of tabs to separate sections of a package are neither required nor desired.

## **12.0 TECHNICAL REVIEW**

### **12.1 TECHNICAL REVIEWERS**

The technical review of all submitted agreements and licenses is provided to DTCL by the Defense Technology Security Administration (DTSA). DTSA's primary concern in these reviews is national security and the safeguard of U.S. technology. The following is a list of the agencies and departments to whom DTSA can include in their technical review of a case:

- Defense Technology Security Administration (DTSA) Engineering
- U.S. Military Services:
  - U.S. Air Force – International Affairs Division (SAF/IA)
  - U.S. Army – Deputy Assistant Secretary of the Army, Defense Exports & Cooperation (DASA (DE&C))
  - U.S. Navy & U.S. Marine Corps – Navy International Programs Office (Navy-IPO)
- National Security Agency (NSA)
- Joint Chiefs of Staff (JCS/J5)
- Defense Security & Cooperation Agency (DSCA)
- Under Secretary for Policy
- Under Secretary for Acquisition, Technology and Logistics
- Missile Technology Export Committee (MTEC)
- Other DOD Agencies (DIA, DISA, DLA, NIMA, NRO, etc.)

### **12.2 TECHNICAL INFORMATION**

#### **Helpful Hints in Preparing Technical Information**

- Explain in simple and concise English.
- Focus on the basic elements of a license: country, commodity, end-user and end-use.
- Explain what you are doing.
- Explain case history if pertinent and provide back up material.
- Explain what you are not doing (may be more important).
- Avoid jargon and do not rely on program names.
- Review previous license provisos and incorporate into the language.
- Cite previous cases – more than one case is fine.
- List current Government Points of Contact.
- Verify information provided.
- If DoD is not involved, then what service would be interested (ITAR 124.12(a)(4)).
- Realize that not all countries are handled equally.
- Explain how will you maintain control of the data.
- Realize that Government and Industry end-users will be treated differently.
- Be realistic with quantities and state how you will maintain control of commodities.
- Recognize possible compliance issues before and after licensing.
- List Internet web sites to assist in the technical review.

## **Common Shortfalls of Submissions**

- Applicant failed to provide any technical data or descriptive literature to adequately conduct a national security or technical assessment of the transaction.
- The transaction is exempt from licensing pursuant to the ITAR.
- An exception to National Disclosure Policy is required for the export of that commodity to the requested country. The U.S. (cognizant military service) could consider sponsoring an exception if a formal request was received from the foreign government.
- The application requests export of "spare parts," but the attachment sheet lists major components, end-items, SME and MTCR Annex items.
- The transaction supports an MLA or TAA, but no agreement case number was referenced on the application.
- The license request fails to identify any specific technical data, technology or defense services that would be exported under the proposed agreement.
- The agreement or license application identified technical data that is too open-ended or ill defined.
- The license request is in response to a Request for Proposal that has not been released by the foreign party.
- Technical data is inappropriately qualified or insufficiently described with the words:
  - "to include, but not be limited to..." or
  - "the scope and extent of the data shall be determined by the applicant and the end-user."
- The transaction is related to a pending Voluntary Disclosure.
- Pursuant to a Commodity Jurisdiction (CJ) determination, this commodity is not on the US Munitions List. Consult the Department of Commerce.

## **12.3 SUPPORT MATERIAL**

- The actual data to be transferred does not always need to be submitted, but a list of the data or short description is generally required. *This is case dependent.*
  - Tech Orders or Manuals for most commodities should be listed, not provided.
  - 9 copies of large stacks of support material is not appreciated – if it is essential to make the case, then contact DTCL to determine how many copies will be required.
- Short summaries, white papers or marketing sheets on commodity or data to be transferred are helpful and preferred.
- When referencing and attaching a lengthy Statement of Work or contract to satisfy ITAR 124.7(2), then also state where the technical data and defense services can be located in the attachment.
- Do not send copies of DTCL approval letters or prior agreements unless they directly support the current application.
- Copies of other signed agreements or DTCL approval letters can sometimes provide precedence; however, U.S. Government policy often changes and each request is reviewed independently. The best way to make this point is to list related agreements that have been approved in the transmittal letter. If a copy of another agreement helps make the case, then submit it, but do not include any irrelevant amendments to that agreement.